IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.827 OF 1997

1. Khandu Babu Khirad
2. Kisan Sambha Devdare
3. Kondiba Laxmani Khirad
4. Mahadu M. Khirad
5. Maruti G. Khirad
6. Rambhau G. Khirad

All r/o At & Post Kadadhe, Tal. Khed, Dist: Pune. .... Petitioners

\- Versus -

1. State of Maharashtra
2. Collector of Pune, Collectorate Office, Pune.
3. Executive Engineer, Chaskaman Project (Dam) Division, Pune.
4. Deputy Executive Engineer, Chaskaman Project Sub-Divn. No.3, Kadadhe, At & Post Kadadhe, Taluka Khed, District: Pune.
5. Forest Conservation Department, Pune through Forest Conservator, Forest Circle, Old P.M.T. Bldg., Swargate, Pune 411 037. .... Respondents

Shri Sanjiv A. Sawant for the Petitioners.

Shri C.R. Sonawane, Asst. Government Pleader, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR & V.M. KANADE, JJ.

DATED: SEPTEMBER 14, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. The petitioners by the present present petition challenge the letters dated 14-11-1996 and 20-11-1996 issued by the respondent No.4 as also seeks direction to the respondents to restore the portion of the land which, according to the petitioners, cannot be used for the purpose for which it was acquired along with the other land under the provisions of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act".

2. Few facts relevant for the decision are that the respondent Nos.1 and 2 acquired various pieces of land for stone mines of Chaskaman Project and on payment of compensation for the acquired land, the possession thereof was taken by the respondents. However, after taking over possession of the acquired land, a portion of the land was sought to utilised for the purpose of cultivation by the petitioners on the assumption that such land was not required for the purpose for which the land was sought to be acquired and the same land was sought to be left unused by the respondents. Meanwhile, in relation to the land which were acquired in the village of Kadadhe, the Government, on representation made by some agriculturists, the same was returned to

their previous land owners wherever the acquired land was not required for the purpose for which it was sought to be acquired. Since the petitioners continued to encroach upon the land which was already acquired, notices were sought to be issued by the respondents on 14-11-1996 and 20-11-1996 giving them warning against any such illegal act in the acquired land. The petitioners, however, on their part made a representation to the respondents on 28-11-1996 for return of the land which was not required for the purpose for which it was acquired. However, the respondents did not respond to the said representation favourably. Hence the present petition.

3. It is the case of the respondents that the land which is acquired is being utilised for the purpose for which it was acquired and only on account of the illegal encroachment sought to be made from time to time by the petitioners, certain portion of the land has remained to be utilised for the purpose for which it was acquired. However, it is not correct to say that the acquired land is not required for the purpose for which it is acquired and, therefore, there is no question of entertaining the representation made by the petitioners.

4. Upon hearing the learned Advocates for the parties and on perusal of the records, it is seen that the main grievance of the petitioners is that since the portion

of the land acquired has not been utilised for the purpose for which it has been acquired, the same be returned to the petitioners i.e. the erstwhile owners of the property. It is well-settled that once a land is acquired and possession thereof taken, the same vests free from all encumbrances in the Government and it cannot be reconveyed or reassigned to the erstwhile owner. Only mode available for disposal of such land is the one prescribed under the Land Revenue Code. Being so, assuming that a portion of the land acquired has not been utilised by the respondents for the purpose for which it was acquired, that itself would not be a justification for issuance of direction to the respondents to return the land to the petitioners. In fact, the law on the point is well-settled and it has been elaborately explained by the Apex Court in the matter of **Govt. of A.P. and another v. Syed Akbar,** reported in 2004 AIR SCW 7125.

5. As regards the contention that some of the land owners were benefited by return of their land on the ground that the said land was not necessary for the purpose for which it was acquired, as already stated above, the law on the point is well-settled. Besides, merely because in some cases, taking into consideration the peculiar circumstances, the Government had released the land in favour of the erstwhile owners, that itself cannot create any right in favour of the other

interested persons to seek similar such relief. There being no right to that effect created in favour of the interested persons, question of issuance of mandamus for that purpose does not arise at all. It is not known under what circumstances the land was returned to the agriculturists in the village of Kadadhe. However, it is not necessary to go into the said issue as the provisions of law do not permit such return of the land, and even assuming that in some cases in improper or illegal exercise of the powers, the Government had returned the acquired land, that cannot create right in favour of the others to insist for repetition of similar such illegality or irregularity and certainly the same cannot be by way of judicial process.

6. The learned Advocate for the petitioners thereupon has submitted that the petitioners would like to make fresh representation to the Government for reconsideration of their requests for return of the land which is not necessary for the purpose for which it was acquired. Nothing prohibits the petitioners from making such representation. Needless to say that in case such a representation is made, the concerned authorities will have to deal with the same in accordance with the provisions of law.

7. For the reasons stated above, therefore, the petition fails and is hereby dismissed. The rule is

discharged with no order as to costs.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**